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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT

(Placer)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ALTON NORRIS PERKINS,

Defendant and Appellant.

C060671

(Super. Ct. Nos.  
62074139, 62078127)

Defendant entered a negotiated no-contest plea to three counts of commercial burglary (Pen. Code, § 459--counts one, four, and seven; undesignated statutory references that follow are to the Penal Code), three counts of identity theft (§ 530.5, subd. (a)--counts two, five, and eight), two counts of forgery (§ 470, subd. (a)--counts three and six), one count of giving false information to a police officer (§ 148.9, subd. (a)--count nine), and admitted two strike and four prior prison term allegations. The court dismissed one of the prior strikes, stayed two of the prior prison terms pursuant to section 654, and sentenced defendant to eight years eight months in prison.

We note that, in a later proceeding, the court imposed a consecutive 16-month term after defendant entered a no-contest plea to failure to appear in case No. 62078127, which was based on defendant's failure to appear for sentencing (\$ 1320.5) in the original case.

On appeal, defendant contends the two prior prison terms should have been stricken rather than stayed, and the sentences for forgery and identity theft should have been stayed pursuant to section 654. We modify the judgment and affirm the judgment as modified.

#### FACTS AND PROCEEDINGS

The facts of defendant's offenses are from the probation report.

Roseville Police Officers were sent to a local Sears store. Defendant had tried to open a line of credit by using a California driver's license that was not his. A records check on the driver's license showed the driver's license number belonged to Tisha A.

Officers later determined defendant used the same driver's license to obtain a credit line from a local Sam's Club and bought \$1,162.05 of merchandise on credit. Defendant also used the fraudulent driver's license to open a line of credit at a Radio Shack and used it to purchase \$2,026.27 worth of merchandise.

Defendant was given a *Miranda* warning. He declined to talk, but made a comment that he was "involved in a theft ring from Oakland."

## DISCUSSION

### I

#### *The Prior Prison Term Enhancements*

The trial court stayed two of the four section 667.5, subdivision (b) prior prison term enhancements. Defendant claims the court erred by failing to strike the enhancement, and the People correctly concede the point.

"Once the prior prison term is found true within the meaning of section 667.5(b), the trial court may not stay the one-year enhancement, which is mandatory unless stricken. [Citations.]" (See *People v. Langston* (2004) 33 Cal.4th 1237, 1241.) It is apparent the court intended to sentence defendant for only two of the four prior prison term enhancements. We modify the judgment and strike the enhancements.

### II

#### *The Forgery and Identity Theft Counts*

Defendant contends the court should have stayed sentence on the forgery and identity theft counts pursuant to section 654. The Attorney General concedes the point and we agree.

Section 654 reads in relevant part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the

longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

(§ 654, subd. (a).) This protection applies if several offenses were committed during "a course of conduct which . . . comprises an indivisible transaction punishable under more than one statute . . . ." (*People v. Coleman* (1989) 48 Cal.3d 112, 162.) Thus, "if all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once." (*People v. Harrison* (1989) 48 Cal.3d 321, 335.)

Whether a defendant entertained a single or multiple criminal objective is a question of fact for the trial court, and its determination will be sustained on appeal if it is supported by substantial evidence. (*People v. Coleman, supra*, 48 Cal.3d at p. 162.) If the court makes no express finding on the issue, a finding that the crimes were divisible "inheres in the judgment" and must be upheld if supported by substantial evidence. (*People v. Nelson* (1989) 211 Cal.App.3d 634, 638.)

The court originally indicated it would stay punishment for the forgery and identity theft counts under section 654. However, in imposing sentence the court ordered concurrent terms for the forgery and theft counts.

"Burglary consists of entry into a house or other specified structure with the intent to commit a felony. [Citation.] Thus, ordinarily, if the defendant commits both burglary and the underlying intended felony, . . . section 654 will permit

punishment for one or the other but not for both. [Citations.]” (*People v. Centers* (1999) 73 Cal.App.4th 84, 98.) Defendant’s three commercial burglaries were committed by entering the businesses, obtaining credit with a false driver’s license, and using the credit to purchase goods. As to each burglary, the attendant forgery and identity theft are part of a common plan to obtain goods from the merchant through falsely obtained credit. Since the court imposed prison terms for the burglary counts, defendant’s sentences for forgery and theft must be stayed pursuant to section 654. Again, we modify the judgment accordingly.

#### DISPOSITION

The judgment is modified to strike two of the prior prison term enhancements (§ 667.5, subd. (b)) and to stay sentencing on the identity theft and forgery counts (counts two, three, five, six, and eight) pursuant to section 654. The trial court is directed to amend the abstract of judgment in accordance with this opinion and is further directed to forward a certified copy of the amended abstract to the Department of Corrections and

Rehabilitation. In all other respects, the judgment is affirmed.

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HULL, J.

We concur:

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RAYE, Acting P. J.

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ROBIE, J.